

CHAPTER 342—H.F.No. 113

An act proposing an amendment to the Minnesota Constitution, article XI, section 14; extending to the year 2025 the dedication of lottery proceeds to the environment and natural resources trust fund and maximizing the long-term total return to the fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution, article XI, section 14, is proposed to the people. If the amendment is adopted, the section will read as follows:

Sec. 14. A permanent Minnesota environment and natural resources trust fund is established in the state treasury. The principal of the environment and natural resources trust fund must be perpetual and inviolate forever, except appropriations may be made from up to 25 percent of the annual revenues deposited in the fund until fiscal year 1997 and Loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law. This restriction does not prevent the sale of investments at less than the cost to the fund, however, all losses not offset by gains shall be repaid to the fund from the earnings of the fund. The net earnings from assets of the fund shall be appropriated in a manner prescribed by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources. The amount appropriated each year of a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, may be up to 5-1/2 percent of the market value of the fund on June 30 one year before the start of the biennium. Not less than 40 percent of the net proceeds from any state-operated lottery must be credited to the fund until the year 2004 2025.

Sec. 2. **SUBMISSION TO PEOPLE.**

The proposed amendment shall be submitted to the people at the 1998 general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to extend to the year 2025 the dedication of lottery proceeds to the environment and natural resources trust fund and to maximize the long-term total return to the fund?"

Yes
No

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:50 a.m.

CHAPTER 343—S.F.No. 2966

An act relating to mortgages; enacting the Minnesota Residential Mortgage Originator and Servicer Licensing Act; establishing licensing and enforcement mechanisms; amending Minnesota

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Statutes 1996, sections 47.206, subdivision 1; 82.17, subdivision 4; 82.18; and 82.27, subdivision 1; proposing coding for new law as Minnesota Statutes, chapter 58; repealing Minnesota Statutes 1996, section 82.175.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

RESIDENTIAL MORTGAGE ORIGINATOR AND SERVICER LICENSING

Section 1. [58.01] CITATION.

This chapter shall be cited as the “Minnesota Residential Mortgage Originator and Servicer Licensing Act.”

Sec. 2. [58.02] DEFINITIONS.

Subdivision 1. SCOPE. For purposes of this chapter, the terms defined in this section have the meanings given to them.

Subd. 2. ACT. “Act” means the Minnesota Residential Mortgage Originator and Servicer Licensing Act.

Subd. 3. ADVANCE FEE. “Advance fee” means a commission, fee, charge, or compensation of any kind paid to a residential mortgage originator before the closing of a loan, that is intended in whole or in part as payment for the originator’s services in finding or attempting to find a loan for a borrower. Advance fee does not include pass-through fees or commitment or extended lock fees or other fees as determined by the commissioner.

Subd. 4. BORROWER. “Borrower” means a person or persons applying for a residential mortgage loan, a mortgagor, or the person or persons on whose behalf the activities in subdivisions 12, 14, 22, and 23 are conducted.

Subd. 5. CLOSING. “Closing” means either or both of the following: (1) the process whereby the real estate contract between a buyer and a seller is consummated; or (2) the process whereby the documents creating a security interest in real property become effective between the borrower and the lender.

Subd. 6. COMMISSIONER. “Commissioner” means the commissioner of commerce.

Subd. 7. EMPLOYEE. “Employee” means an individual who is treated as an employee by the residential mortgage originator or servicer for purposes of compliance with federal income tax laws.

Subd. 8. ESCROW ACCOUNT. “Escrow account” means a trust account that is established and maintained to hold funds received from a borrower, such as real estate taxes and insurance premiums, incurred in connection with the servicing of the mortgage.

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Subd. 9. **EXEMPT PERSON.** “Exempt person” means a person exempt from residential mortgage originator licensing requirements, and a person exempt from residential mortgage service licensing requirements.

Subd. 10. **FINANCIAL INSTITUTION.** “Financial institution” means a bank, bank and trust, trust company with banking powers, savings bank, savings association, or credit union, organized under the laws of this state or the United States; a Minnesota host state branch of an out-of-state state-chartered bank as provided for in section 49.411; an industrial loan and thrift under chapter 53; or a regulated lender under chapter 56. The term “financial institution” also includes a subsidiary or operating subsidiary of a financial institution or of a bank holding company as defined in the federal Bank Holding Company Act, United States Code, title 12, section 1841 et seq., if the subsidiary or operating subsidiary can demonstrate to the satisfaction of the commissioner that it is regulated and subject to active and ongoing oversight and supervision by a federal banking agency, as defined in the Federal Deposit Insurance Act, United States Code, title 12, section 1811 et seq., or the commissioner.

Subd. 11. **LENDER.** “Lender” means a person who makes residential mortgage loans including a person who provides table funding.

Subd. 12. **MAKING A RESIDENTIAL MORTGAGE LOAN.** “Making a residential mortgage loan” means for compensation or gain, or the expectation of compensation or gain, to advance funds or make a commitment to advance funds in connection with a residential mortgage.

Subd. 13. **MORTGAGE BROKER; BROKER.** “Mortgage broker” or “broker” means a person who performs the activities described in subdivisions 14 and 23.

Subd. 14. **MORTGAGE BROKERING; BROKERING.** “Mortgage brokering” or “brokering” means helping to obtain from another person, for a borrower, a residential mortgage loan or assisting a borrower in obtaining a residential mortgage loan in return for consideration to be paid by the borrower or lender or both. Mortgage brokering or brokering includes, but is not limited to, soliciting, placing, or negotiating a residential mortgage loan.

Subd. 15. **NET WORTH.** “Net worth” has the meaning given it in section 58.07.

Subd. 16. **PERSON.** “Person” means a natural person, firm, partnership, limited liability partnership, corporation, association, limited liability company, or other form of business organization and the officers, directors, employees, or agents of that person.

Subd. 17. **PERSON IN CONTROL.** “Person in control” means any member of senior management and other persons who possess, directly or indirectly, the power to direct or cause the direction of the management policies of an applicant or licensee under this chapter, regardless of whether the person has any ownership interest in the applicant or licensee. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of an applicant or licensee or of a person who owns, controls, or holds with power to vote ten percent or more of the voting stock of an applicant or licensee.

Subd. 18. **RESIDENTIAL MORTGAGE LOAN.** “Residential mortgage loan” means a loan made primarily for personal, family, or household use and secured primarily by either a: (1) mortgage on residential real property; or (2) certificates of stock or other

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evidence of ownership interest in and proprietary lease from corporations, partnerships, or other forms of business organizations formed for the purpose of cooperative ownership of residential real property.

Subd. 19. RESIDENTIAL MORTGAGE ORIGINATOR. “Residential mortgage originator” means a person who, directly or indirectly, for compensation or gain or in expectation of compensation or gain, solicits or offers to solicit, or accepts or offers to accept an application for a residential mortgage loan through any medium or mode of communication from a borrower, or makes a residential mortgage loan. “Residential mortgage originator” includes a lender as defined in subdivision 11 and a broker as defined in subdivision 13.

Subd. 20. RESIDENTIAL MORTGAGE SERVICER; SERVICER. “Residential mortgage servicer” or “servicer” means a person who engages in the activity of servicing a residential mortgage as defined in subdivision 22.

Subd. 21. RESIDENTIAL REAL PROPERTY; RESIDENTIAL REAL ESTATE. “Residential real property” or “residential real estate” means real property improved or intended to be improved by a structure designed principally for the occupancy of from one to four families.

Subd. 22. SERVICING; SERVICING A RESIDENTIAL MORTGAGE. “Servicing” or “servicing a residential mortgage loan” means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect or remit for a lender, mortgagee, note owner, noteholder, or for a person’s own account, of payments, interest, principal, and escrow items such as insurance and taxes for property subject to a residential mortgage loan.

Subd. 23. SOLICITING, PLACING, OR NEGOTIATING A RESIDENTIAL MORTGAGE LOAN. “Soliciting, placing, or negotiating a residential mortgage loan” means for compensation or gain or expectation of compensation or gain, whether directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting, or offering to assist a borrower in applying for a residential mortgage loan, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower.

Subd. 24. TABLE FUNDING. “Table funding” means a closing or settlement at which a residential mortgage loan is funded by a lender by way of a contemporaneous advance of residential mortgage loan funds and an assignment of the residential mortgage loan to the lender advancing the funds.

Subd. 25. TRUST ACCOUNT. “Trust account” means a negotiable order of withdrawal account, demand deposit, or checking account maintained for the purpose of segregating trust funds from other funds. A “trust account” must not allow the financial institution a right of set-off against the money owed it by the account holder.

Subd. 26. TRUST FUNDS. “Trust funds” means funds received by a residential mortgage originator or servicer in a fiduciary capacity for later distribution, such as appraisal or credit report fees, taxes, or insurance premiums. Trust funds includes commitment, lock, extended lock, and advance fees.

Sec. 3. [58.03] CLASSES OF LICENSE.

The commissioner may issue the following classes of license under this chapter:

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(1) a residential mortgage originator license; and

(2) a residential mortgage servicer license.

Sec. 4. [58.04] LICENSING REQUIREMENT.

Subdivision 1. RESIDENTIAL MORTGAGE ORIGINATOR LICENSING REQUIREMENTS. (a) Beginning August 1, 1999, no person shall act as a residential mortgage originator, or make residential mortgage loans without first obtaining a license from the commissioner according to the licensing procedures provided in this chapter.

(b) The following persons are exempt from the residential mortgage originator licensing requirements:

(1) an employee of one mortgage originator licensee or one person holding a certificate of exemption;

(2) a person engaged solely in commercial mortgage activities;

(3) a person licensed as a real estate broker under chapter 82, and an individual licensee who is licensed to the broker if:

(i) the individual licensee acts only under the name, authority, and supervision of the broker to whom the licensee is licensed;

(ii) the broker obtains a certificate of exemption according to section 58.05, subdivision 2;

(iii) the broker does not collect an advance fee for its residential mortgage-related activities; and

(iv) the residential mortgage origination activities are incidental to the real estate licensee's primary activities as a real estate broker or salesperson;

(4) a person making no more than five residential mortgage loans with its own funds, during any 12-month period;

(5) a financial institution as defined in section 58.02, subdivision 10;

(6) an agency of the federal government, or of a state or municipal government;

(7) an employee or employer pension plan making loans only to its participants;

(8) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or

(9) a person exempted by order of the commissioner.

Subd. 2. RESIDENTIAL MORTGAGE SERVICER LICENSING REQUIREMENTS. (a) Beginning August 1, 1999, no person shall engage in activities or practices that fall within the definition of "servicing a residential mortgage loan" under section 58.02, subdivision 22, without first obtaining a license from the commissioner according to the licensing procedures provided in this chapter.

(b) The following persons are exempt from the residential mortgage servicer licensing requirements:

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- (1) a person licensed as a residential mortgage originator;
- (2) an employee of one licensee or one person holding a certificate of exemption based on an exemption under this subdivision;
- (3) a person engaged solely in commercial mortgage activities;
- (4) a person servicing loans made with its own funds, if no more than five such loans are made in any 12-month period;
- (5) a financial institution as defined in section 58.02, subdivision 10;
- (6) an agency of the federal government; or of a state or municipal government;
- (7) an employee or employer pension plan making loans only to its participants;
- (8) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or
- (9) a person exempted by order of the commissioner.

Subd. 3. **CONDUCTING BUSINESS UNDER LICENSE.** No person required to be licensed under this chapter may, without a license, do business under a name or title or circulate or use advertising or make representations or give information to a person, that indicates or reasonably implies activity within the scope of this chapter.

Subd. 4. **APPLICABILITY TO BANKS AND CREDIT UNIONS.** Except for section 58.13, this chapter does not apply to a bank, savings bank, savings association, or credit union subject to supervision by either a federal regulatory agency or the commissioner.

Sec. 5. [58.05] EXEMPTIONS FROM LICENSE.

Subdivision 1. **EXEMPTION FROM LICENSURE.** An exempt person as defined by section 58.04, subdivision 1, paragraph (b), and subdivision 2, paragraph (b), is exempt from the licensing requirements of this chapter, but is subject to all other provisions of this chapter.

Subd. 2. **ELIGIBILITY FOR EXEMPTION.** To qualify as an exempt person, a person, except an employee exempt under section 58.04, subdivision 1, paragraph (b), clause (1), or subdivision 2, paragraph (b), clause (2), or an individual real estate licensee exempt under section 58.04, subdivision 1, paragraph (b), clause (3), must obtain a certificate of exemption from the commissioner. A certificate of exemption will be issued upon the person's filing, on a form provided by the commissioner, a statement indicating the basis on which the exemption is claimed and, if applicable, the name and address of the state or federal regulatory agency or body to which complaints regarding the person's residential mortgage originating or servicing activities may be directed.

Sec. 6. [58.06] APPLICATION REQUIREMENTS FOR RESIDENTIAL MORTGAGE ORIGINATORS AND SERVICERS.

Subdivision 1. **LICENSE APPLICATION FORM.** Application for a residential mortgage originator or a residential mortgage servicer license must be in writing, under oath, and on a form obtained from and prescribed by the commissioner.

Subd. 2. **APPLICATION CONTENTS.** The application must contain the name and complete business address or addresses of the license applicant. If the license appli-

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cant is a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, the application must contain the names and complete business addresses of each partner, member, director, and principal officer. The application must also include a description of the activities of the license applicant, in the detail and for the periods the commissioner may require. The application must also include all of the following:

(a) an affirmation under oath that the applicant:

(1) will maintain competent staff and adequate staffing levels, through direct employees or otherwise, to meet the requirements of this chapter;

(2) will advise the commissioner of any material changes to the information submitted in the most recent application within ten days of the change;

(3) will advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the applicant or licensee;

(4) is financially solvent and in compliance with net worth requirements;

(5) complies with federal and state tax laws;

(6) complies with sections 345.31 to 345.60, the Minnesota unclaimed property law; and

(7) is, or that a person in control of the license applicant is, at least 18 years of age;

(b) information as to the mortgage lending, servicing, or brokering experience of the applicant and persons in control of the applicant;

(c) information as to criminal convictions, excluding traffic violations, of persons in control of the license applicant;

(d) whether a court of competent jurisdiction has found that the applicant or persons in control of the applicant have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit in performing an act for which a license is required under this chapter;

(e) whether the applicant or persons in control of the applicant have been the subject of: an order of suspension or revocation, cease and desist order, or injunctive order, or order barring involvement in an industry or profession issued by this or another state or federal regulatory agency or by the Secretary of Housing and Urban Development within the ten-year period immediately preceding submission of the application; and

(f) other information required by the commissioner.

Sec. 7. [58.07] NET WORTH FOR ORIGINATORS AND SERVICERS.

Subdivision 1. REQUIREMENT. A licensee who is issued a residential mortgage originator license shall maintain a minimum net worth of \$25,000. A licensee who is issued a residential mortgage servicer's license shall maintain a minimum net worth of \$250,000.

Subd. 2. COMPUTATION. Net worth must be computed according to generally accepted accounting principles and must reflect any adjustment to net worth required by the Government National Mortgage Association.

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Subd. 3. **CERTIFIED FINANCIALS.** The commissioner may require the submission of financial data audited by an independent certified public accountant when it is considered necessary for an investigation or examination.

Sec. 8. [58.08] BONDS; LETTERS OF CREDIT.

Subdivision 1. REQUIREMENT OF RESIDENTIAL MORTGAGE ORIGINATORS. A residential mortgage originator licensee shall continuously maintain a surety bond or irrevocable letter of credit in an amount not less than \$50,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter, and for losses or damages incurred by borrowers as the result of a licensee's noncompliance with the requirements of this chapter, sections 325D.43 to 325D.48, and 325F.67 to 325F.69, or breach of contract.

The bond or irrevocable letter of credit must be submitted with the originator's license application, and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner, within ten days of its execution.

Subd. 2. REQUIREMENT OF RESIDENTIAL MORTGAGE SERVICERS. A residential mortgage servicer licensee shall continuously maintain a surety bond or irrevocable letter of credit in an amount not less than \$100,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter, and for losses or damages incurred by borrowers or other aggrieved parties as the result of a licensee's noncompliance with the requirements of this chapter, sections 325D.43 to 325D.48, and 325F.67 to 325F.69, or breach of contract relating to activities regulated by this chapter.

The bond or irrevocable letter of credit must be submitted with the servicer's license application and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner, within ten days of its execution.

Subd. 3. EXEMPTION. Subdivisions 1 and 2 do not apply to mortgage originators or mortgage servicers who are approved as seller/ servicers by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Sec. 9. [58.09] TERM OF LICENSE.

Initial licenses for residential mortgage originators and residential mortgage servicers issued under this chapter expire on July 31, 2001, and are renewable on August 1, 2001, and on August 1 of each odd-numbered year after that date. A new licensee whose license expires less than 12 months from the date of issuance shall pay a fee equal to one-half the applicable initial license fee set forth in section 58.10, subdivision 1, clause (1) or (3).

Sec. 10. [58.10] FEES.

Subdivision 1. AMOUNTS. The following fees must be paid to the commissioner:

(1) for an initial residential mortgage originator license, \$800;

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- (2) for a renewal license, \$400;
- (3) for an initial residential mortgage servicer's license, \$1,000;
- (4) for a renewal license, \$500;
- (5) license service fees as set forth in chapter 45; and
- (6) for a certificate of exemption, \$100.

Subd. 2. FORFEITURE. All fees are nonrefundable except that an overpayment of a fee must be refunded upon proper application.

Sec. 11. [58.11] LICENSE RENEWAL.

Subdivision 1. TERM. Licenses are renewable on August 1, 2001, and on August 1 of each odd-numbered year after that date.

Subd. 2. TIMELY RENEWAL. (a) A person whose application is properly and timely filed who has not received notice of denial of renewal is considered approved for renewal and the person may continue to transact business as a residential mortgage originator or servicer whether or not the renewed license has been received on or before August 1 of the renewal year. Application for renewal of a license is considered timely filed if received by the commissioner by, or mailed with proper postage and postmarked by, July 15 of the renewal year. An application for renewal is considered properly filed if made upon forms duly executed and sworn to, accompanied by fees prescribed by this chapter, and containing any information that the commissioner requires.

(b) A person who fails to make a timely application for renewal of a license and who has not received the renewal license as of August 1 of the renewal year is unlicensed until the renewal license has been issued by the commissioner and is received by the person.

Subd. 3. CONTENTS OF RENEWAL APPLICATION. Application for the renewal of an existing license must contain the information specified in section 58.06, subdivision 2; however, only the requested information having changed from the most recent prior application need be submitted.

Subd. 4. CANCELLATION. A licensee ceasing an activity or activities regulated by this chapter and desiring to no longer be licensed shall so inform the commissioner in writing and, at the same time, surrender the license and all other symbols or indicia of licensure. The licensee shall include a plan for the withdrawal from regulated business, including a timetable for the disposition of the business.

Sec. 12. [58.12] DENIAL, SUSPENSION, REVOCATION OF LICENSES.

Subdivision 1. POWERS OF COMMISSIONER. (a) The commissioner may by order take any or all of the following actions:

- (1) bar a person from engaging in residential mortgage origination or servicing;
- (2) deny, suspend, or revoke a residential mortgage originator or a servicer license;
- (3) censure a licensee;
- (4) impose a civil penalty as provided for in section 45.027, subdivision 6; or

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(5) revoke an exemption or certificate of exemption.

(b) In order to take the action in paragraph (a), the commissioner must find:

(1) that the order is in the public interest; and

(2) that the residential mortgage originator, servicer, applicant, or other person, an officer, director, partner, employee, or agent or any person occupying a similar status or performing similar functions, or a person in control of the originator, servicer, applicant, or other person has:

(i) violated any provision of this chapter or rule or order under this chapter;

(ii) filed an application for a license that is incomplete in any material respect or contains a statement that, in light of the circumstances under which it is made, is false or misleading with respect to a material fact;

(iii) failed to maintain compliance with the affirmations made under section 58.06, subdivision 2;

(iv) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business;

(v) engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;

(vi) pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude;

(vii) paid a civil penalty or been the subject of disciplinary action by the commissioner, or an order of suspension or revocation, cease and desist order or injunction order or order barring involvement in an industry or profession issued by this or any other state or federal regulatory agency or by the Secretary of Housing and Urban Development;

(viii) been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit;

(ix) refused to cooperate with an investigation or examination by the commissioner;

(x) failed to pay any fee or assessment imposed by the commissioner; or

(xi) failed to comply with state and federal tax obligations.

Subd. 2. ORDERS OF THE COMMISSIONER. To begin a proceeding under this section, the commissioner shall issue an order requiring the subject of the proceeding to show cause why action should not be taken against the person according to this section. The order must be calculated to give reasonable notice of the time and place for the hearing and must state the reasons for entry of the order. The commissioner may by order summarily suspend a license or exemption or summarily bar a person from engaging in residential mortgage origination or servicing, pending a final determination of an order to show cause. If a license or exemption is summarily suspended or if the person is summarily barred from any involvement in the residential mortgage loan business, pending

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final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of summary suspension or bar. All hearings must be conducted under chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the subject of the order fails to appear at a hearing after having been duly notified of it, the person is considered in default, and the proceeding may be determined against the subject of the order upon consideration of the order to show cause, the allegations of which may be considered to be true.

Subd. 3. ACTIONS AGAINST LAPSED LICENSE. If a license or certificate of exemption lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license or certificate of exemption was last effective and enter a revocation or suspension order as of the last date on which the license or certificate of exemption was in effect, and may impose a civil penalty as provided for in this section or section 45.027, subdivision 6.

Sec. 13. [58.13] STANDARDS OF CONDUCT.

Subdivision 1. GENERALLY. No person acting as a residential mortgage originator or servicer, including a person required to be licensed under this chapter, and no person exempt from the licensing requirements of this chapter under section 58.04, shall:

(1) fail to maintain a trust account to hold trust funds received in connection with a residential mortgage loan;

(2) fail to deposit all trust funds into a trust account within three business days of receipt; commingle trust funds with funds belonging to the licensee or exempt person; or use trust account funds for any purpose other than that for which they are received;

(3) unreasonably delay the processing of a residential mortgage loan application, or the closing of a residential mortgage loan. For purposes of this clause, evidence of unreasonable delay includes but is not limited to those factors identified in section 47.206, subdivision 7, clause (d);

(4) fail to disburse funds according to its contractual or statutory obligations;

(5) fail to perform in conformance with its written agreements with borrowers, investors, other licensees, or exempt persons;

(6) charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service;

(7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property law;

(8) violate any provision of any other applicable state or federal law regulating residential mortgage loans including, without limitation, sections 47.20 to 47.208;

(9) make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product;

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(10) conduct residential mortgage loan business under any name other than that under which the license or certificate of exemption was issued;

(11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan;

(12) issue any document indicating conditional qualification or conditional approval for a residential mortgage loan, unless the document also clearly indicates that final qualification or approval is not guaranteed, and may be subject to additional review;

(13) make or assist in making any residential mortgage loan with the intent that the loan will not be repaid and that the residential mortgage originator will obtain title to the property through foreclosure;

(14) provide or offer to provide for a borrower, any brokering or lending services under an arrangement with a person other than a licensee or exempt person, provided that a person may rely upon a written representation by the residential mortgage originator that it is in compliance with the licensing requirements of this chapter;

(15) claim to represent a licensee or exempt person, unless the person is an employee of the licensee or exempt person or unless the person has entered into a written agency agreement with the licensee or exempt person;

(16) fail to comply with the recordkeeping and notification requirements identified in section 58.14 or fail to abide by the affirmations made on the application for licensure;

(17) represent that the licensee or exempt person is acting as the borrower's agent after providing the non-agency disclosure required by section 58.15, unless the disclosure is retracted and the licensee or exempt person complies with all of the requirements of section 58.16;

(18) make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate and/or lower discount points, and consents in writing to receipt of the lower investment grade loan.

For purposes of this section, "investment grade" refers to a system of categorizing residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or "subprime;" (ii) commonly designated by an alphabetical character with "A" being the highest investment grade; and (iii) are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure;

(19) make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any

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statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading;

(20) advertise loan types or terms that are not available from or through the licensee or exempt person on the date advertised, or on the date specified in the advertisement. For purposes of this clause, advertisement includes, but is not limited to, a list of sample mortgage terms, including interest rates, discount points, and closing costs provided by licensees or exempt persons to a print or electronic medium that presents the information to the public; and

(21) use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a licensee or other person is a governmental agency, or is associated with, sponsored by, or in any manner connected to, related to, or endorsed by a governmental agency, if that is not the case.

Subd. 2. STATEMENTS, REPRESENTATIONS, OR ADVERTISING. A statement, representation, or advertisement is deceptive or misleading if it has the capacity or tendency to deceive or mislead a borrower or potential borrower. The commissioner shall consider the following factors in deciding whether a statement, representation, or advertisement is deceptive or misleading: the overall impression that the statement, representation, or advertisement reasonably creates; the particular type of audience to which it is directed; and whether it may be reasonably comprehended by the segment of the public to which it is directed.

Sec. 14. [58.14] RECORDKEEPING AND NOTIFICATION REQUIREMENTS.

Subdivision 1. CHANGE IN LICENSING DATA. A licensee must advise the commissioner of any material changes to the information submitted in the most recent license application within ten days of the change.

Subd. 2. NOTICE OF BANKRUPTCY PETITIONS. A licensee or person who has been issued a certificate of exemption must advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the licensee.

Subd. 3. DOCUMENTATION AND RESOLUTION OF COMPLAINTS. A licensee or exempt person must investigate and attempt to resolve complaints made regarding acts or practices subject to the provisions of this chapter. If a complaint is received in writing, the licensee or exempt person must maintain a file containing all materials relating to the complaint and subsequent investigation for a period of 26 months.

Subd. 4. TRUST ACCOUNT RECORDS FOR MORTGAGE ORIGINATORS. A residential mortgage originator shall keep and maintain for 26 months a record of all trust funds, sufficient to identify the transaction, date and source of receipt, and date and identification of disbursement.

Subd. 5. RECORD RETENTION. A licensee or exempt person must keep and maintain for 26 months the business records regarding residential mortgage loans applied for, originated, or serviced in the course of its business.

Sec. 15. [58.15] DISCLOSURE REQUIREMENTS FOR RESIDENTIAL MORTGAGE ORIGINATORS.

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. NON-AGENCY DISCLOSURE. If a residential mortgage originator or exempt person does not contract or offer to contract to act as an agent of a borrower, or accept an advance fee, it must, within 72 hours of accepting an application for a residential mortgage loan, provide the borrower with a written disclosure as provided in subdivision 2.

Subd. 2. FORM AND CONTENT REQUIREMENTS. The disclosure must be a separate document, 8-1/2 inches by 11 inches, must be signed by the borrower and must contain the following statement in 14-point boldface print:

ORIGINATOR IS NOT ACTING AS YOUR AGENT IN CONNECTION WITH OBTAINING A RESIDENTIAL MORTGAGE LOAN. WHILE WE SEEK TO ASSIST YOU IN MEETING YOUR FINANCIAL NEEDS, WE CANNOT GUARANTEE THE LOWEST OR BEST TERMS AVAILABLE IN THE MARKET.

Subd. 3. ELECTRONIC APPLICATION DISCLOSURE REQUIREMENT. In case of an electronic residential mortgage application, the disclosure requirements of this section may be satisfied by providing the disclosure statement as a separate screen if the disclosure must be acknowledged by the borrower before an application is accepted.

Subd. 4. EXEMPTION FROM DISCLOSURE REQUIREMENT. If the Department of Housing and Urban Development adopts and implements a disclosure requirement for persons offering mortgage origination services that the commissioner determines to be substantially similar to the disclosure required in subdivision 2, licensees and exempt persons complying with the HUD disclosure shall be considered to have complied with the requirements of subdivisions 1 and 2.

Sec. 16. [58.16] RESIDENTIAL MORTGAGE ORIGINATORS; STANDARDS OF CONDUCT FOR AGENCY OR ADVANCE FEE TRANSACTIONS.

Subdivision 1. COMPLIANCE. Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in this state in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower located in this state in obtaining a loan secured by a lien on residential real estate shall be considered to have created a fiduciary relationship with the borrower and shall comply with the requirements of subdivisions 2 to 7.

Subd. 2. CONTRACT PROVISIONS. A residential mortgage originator who engages in the activities described in subdivision 1 shall enter into a written contract with each borrower and shall provide a copy of the written contract to each borrower at or before the time of receipt of any fee or valuable consideration paid for mortgage origination services. The written contract must:

(1) specifically describe the services to be provided by the residential mortgage originator and if the originator collects an advance fee, the dates by which the services will be performed;

(2) specifically identify whether the residential mortgage originator may receive compensation from sources other than the borrower in connection with the loan transaction;

New language is indicated by underline, deletions by strikeout.

(3) state the total amount of commission or compensation that the borrower agrees to pay for the residential mortgage originator's services, or the basis on which the compensation will be computed;

(4) state the maximum rate of interest to be charged on any residential mortgage loan obtained;

(5) contain a statement that notifies the borrower of the right to cancel the contract according to subdivision 3; and

(6) disclose, with respect to the 12-month period ending ten business days before the date of the contract in question, the percentage of the mortgage originator's customers for whom loans have actually been funded as a result of the residential mortgage originator's services.

(c) If an advance fee is solicited or received the contract must also:

(1) identify the trust account into which the fees or consideration will be deposited;

(2) set forth the circumstances under which the residential mortgage originator will be entitled to disbursement from the trust account; and

(3) set forth the circumstances under which the borrower will be entitled to a refund of all or part of the fee.

Subd. 3. CANCELLATION. A borrower who pays an advance fee, or who enters into a contract for residential mortgage services as set forth in subdivisions 1 and 2, has an unconditional right to rescind the contract for residential mortgage origination services at any time until midnight of the third business day after the day on which the contract is signed. Cancellation is evidenced by the borrower giving written notice of cancellation to the residential mortgage originator at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox properly addressed to the originator with postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the borrower not be bound by the contract. No act of a borrower or a residential mortgage originator is effective to waive the right to rescind as provided in this subdivision.

Subd. 4. TRUST ACCOUNT. The residential mortgage originator shall deposit in a trust account within three business days all fees received before the time a loan is actually funded. The trust account must be in a financial institution located within the state of Minnesota.

Subd. 5. RECORDS. The residential mortgage originator shall maintain a separate record of all fees received for services performed or to be performed as a residential mortgage originator. Each record must set forth the date the funds are received; the person from whom the funds are received; the amount received; the date of deposit in the escrow account, the account number, the date the funds are disbursed and the check number of the disbursement, and a description of each disbursement and the justification for the disbursement.

Subd. 6. MONTHLY STATEMENT. The residential mortgage originator shall provide to each borrower at least monthly a detailed written accounting of all disbursements of the borrower's funds from the trust account.

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Subd. 7. **DISCLOSURE OF LENDERS.** The residential mortgage originator shall provide to each borrower at the expiration of the contract a list of the lenders or loan sources to whom loan applications were submitted on behalf of the borrower.

Sec. 17. **[58.17] SCOPE OF CHAPTER.**

Subdivision 1. **RESIDENTIAL MORTGAGE ORIGINATOR SERVICES.** This chapter applies when an offer of residential mortgage origination services is made to a borrower in this state or when the residential mortgage originator is located in this state.

Subd. 2. **RESIDENTIAL MORTGAGE SERVICING.** The provisions of this chapter regarding residential mortgage servicing apply when the borrower is a resident of this state.

Subd. 3. **OFFER.** For purposes of this section, an "offer" means any advertisement or solicitation of any type, including an advertisement or solicitation in newspapers and magazines, by mail, by telephone, on television, on radio, or via the internet or any other electronic medium of any kind, for residential mortgage originator services. The term "offer" excludes an advertisement or solicitation that specifically states that the services are not available to Minnesota residents.

Sec. 18. **REPEALER.**

Minnesota Statutes 1996, section 82.175, is repealed.

Sec. 19. **EFFECTIVE DATES.**

Sections 1 to 11 and 17 are effective July 1, 1998. Sections 12 to 16 are effective July 1, 1999.

ARTICLE 2

CONFORMING CHANGES

Section 1. Minnesota Statutes 1996, section 47.206, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Lender" means a person or entity referred to in section 47.20, subdivision 1, a credit union, or a person making a conventional loan as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans include any loan or advance of credit in an original principal balance of less than \$200,000. "Lender" also means a mortgage broker as defined in paragraph (e).

(b) "Loan" means loans and advances of credit authorized under section 47.20, subdivision 1, clauses (1) to (4), and conventional loans as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loans as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans also include all loans and advances of credit in an original principal balance of less than

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\$200,000. "Loan" does not include a loan or advance of credit secured by a mortgage upon real property containing more than one residential unit or secured by a security interest in shares of more than one residential unit in a building owned or leased by a cooperative apartment corporation.

(c) "Borrower" means a natural person who has submitted an application for a loan to a lender.

(d) "Interest rate or discount point agreement" or "agreement" means a contract between a lender and a borrower under which the lender agrees, subject to the lender's underwriting and approval requirements, to make a loan at a specified interest rate or number of discount points, or both, and the borrower agrees to make a loan on those terms. The term also includes an offer by a lender that is accepted by a borrower under which the lender promises to guarantee or lock in an interest rate or number of discount points, or both, for a specific period of time.

(e) "Mortgage broker" includes:

(1) a person who ~~negotiates mortgage loans as described in section 82.17, subdivision 4, clause (b), if the person does not qualify for the exception set forth in section 82.18, clause (e); performs or offers to perform the activities of "mortgage brokering" or "soliciting, placing, or negotiating a residential mortgage loan" as defined by chapter 58;~~
or

(2) the employees of the a person; or

~~(3) any person or firm which holds itself out to the public as a mortgage broker, regardless of whether the person or firm holds a limited broker's license pursuant to section 82.20, subdivision 13 described in clause (1).~~

Sec. 2. Minnesota Statutes 1996, section 82.17, subdivision 4, is amended to read:

Subd. 4. "Real estate broker" or "broker" means any person who:

(a) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities;

(b) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly negotiates or offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real estate, which is not a residential mortgage loan as defined by section 58.02, subdivision 18;

(c) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or rental of any business opportunity or business, or its good will, inventory, or fixtures, or any interest therein;

(d) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly offers, sells or at-

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tempts to negotiate the sale of property that is subject to the registration requirements of chapter 83, concerning subdivided land;

(e) for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same, promotes the sale of real estate by advertising it in a publication issued primarily for this purpose, if the person:

(1) negotiates on behalf of any party to a transaction;

(2) disseminates any information regarding the property to any party or potential party to a transaction subsequent to the publication of the advertisement, except that in response to an initial inquiry from a potential purchaser, the person may forward additional written information regarding the property which has been prepared prior to the publication by the seller or broker or a representative of either;

(3) counsels, advises, or offers suggestions to the seller or a representative of the seller with regard to the marketing, offer, sale, or lease of the real estate, whether prior to or subsequent to the publication of the advertisement;

(4) counsels, advises, or offers suggestions to a potential buyer or a representative of the seller with regard to the purchase or rental of any advertised real estate; or

(5) engages in any other activity otherwise subject to licensure under this chapter;

(f) engages wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not the real estate is owned by the person. A person shall be presumed to be engaged in the business of selling real estate if the person engages as principal in five or more transactions during any 12-month period, unless the person is represented by a licensed real estate broker or salesperson;

~~(g) offers or makes more than five loans secured by real estate during any 12-month period and who is not a bank, savings bank, mutual savings bank, or savings association organized under the laws of this state or the United States, trust company, trust company acting as a fiduciary, or other financial institution subject to the supervision of the commissioner of commerce, or mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration, or approved or certified by the Federal Home Loan Mortgage Corporation, or approved or certified by the Federal National Mortgage Association.~~

Sec. 3. Minnesota Statutes 1996, section 82.18, is amended to read:

82.18 EXCEPTIONS.

Unless a person is licensed or otherwise required to be licensed under this chapter, the term real estate broker does not include:

(a) a licensed practicing attorney if the attorney complies in all respects with the trust account provisions of this chapter;

(b) a receiver, trustee, administrator, guardian, executor, or other person appointed by or acting under the judgment or order of any court;

(c) any person owning and operating a cemetery and selling lots therein solely for use as burial plots;

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(d) any custodian, janitor, or employee of the owner or manager of a residential building who leases residential units in the building;

(e) any bank, trust company, savings association, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law;

(f) public officers while performing their official duties;

(g) employees of persons enumerated in clauses (b), (e), and (f), when engaged in the specific performance of their duties;

(h) any person who acts as an auctioneer bonded in conformity with section 330.02, when that person is engaged in the specific performance of duties as an auctioneer, and when that person has been employed to auction real estate by a person licensed under this chapter or when the auctioneer has engaged a licensed attorney to supervise the real estate transaction;

(i) any person who acquires real estate for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial or industrial buildings for the purpose of resale if no more than 25 such transactions occur in any 12-month period and the person complies with section 82.24;

(j) any person who is licensed as a securities broker-dealer or is licensed as a securities agent representing a broker-dealer pursuant to chapter 80A and who offers to sell or sells an interest or estate in real estate which is a security as defined in section 80A.14, subdivision 18, and is registered or exempt from registration or part of a transaction exempt from registration pursuant to chapter 80A, when acting solely as an incident to the sale of these securities;

(k) any person who offers to sell or sells a business opportunity which is a franchise registered pursuant to chapter 80C, when acting solely to sell the franchise;

(l) any person who contracts with or solicits on behalf of a provider a contract with a resident or prospective resident to provide continuing care in a facility, pursuant to the Continuing Care Facility Disclosure and Rehabilitation Act (chapter 80D), when acting solely as incident to the contract;

(m) any broker-dealer or agent of a broker-dealer when participating in a transaction in which all or part of a business opportunity or business, including any interest therein, is conveyed or acquired pursuant to an asset purchase, merger, exchange of securities, or other business combination, if the agent or broker-dealer is licensed pursuant to chapter 80A;

(n) an accountant acting incident to the practice of the accounting profession if the accountant complies in all respects with the trust account provisions of this chapter;

(o) a person who negotiates mortgage loans as described in section 82.17, subdivision 4, clause (b), if the person is the actual lender on at least 80 percent of all mortgage lending and brokering transactions conducted by the person and if the person is also a lender: (1) approved or certified by the secretary of housing and urban development; (2) approved or certified by the administrator of Veterans Affairs; (3) approved or certified

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by the Administrator of the Farmers Home Administration; (4) approved or certified by the Federal Home Loan Mortgage Corporation; or (5) approved or certified by the Federal National Mortgage Association.

Sec. 4. Minnesota Statutes 1996, section 82.27, subdivision 1, is amended to read:

Subdivision 1. The commissioner may by order deny, suspend or revoke any license or may censure a licensee if the commissioner finds (1) that the order is in the public interest, and (2) that the applicant or licensee or, in the case of a broker, any officer, director, partner, employee or agent or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker or closing agent or controlled by the broker or closing agent:

(a) has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(b) has engaged in a fraudulent, deceptive, or dishonest practice;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate business;

(d) has failed to reasonably supervise brokers, salespersons, or closing agents so as to cause injury or harm to the public;

(e) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter;

(f) has, in the conduct of the licensee's affairs under the license, been shown to be incompetent, untrustworthy, or financially irresponsible; or

(g) has acted on behalf of any party to a transaction, where the licensee has a conflict of interest that may affect the licensee's ability to represent that party, without the knowledge and consent of the party; or

(h) has, while performing residential mortgage activities regulated under chapter 58 violated any provision of chapter 58.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective August 1, 1999.

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:58 a.m.

CHAPTER 344—S.F.No. 2489

An act relating to commerce; regulating residential mortgage loans; establishing table funding requirements; proposing coding for new law in Minnesota Statutes, chapter 82.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[82.176] TABLE FUNDING.**

New language is indicated by underline, deletions by ~~strikeout~~.